I. Call to Order. Chairman Frank Frazier called the meeting to order at 6:30 p.m.

II. Roll Call: Members, Alternates, Appointment of Alternates per RSA 673:11,673:12

A. Members present: Chairman Frank Frazier, Ernie Brown, Richard Mauser, Paul Tremblay, Susan Weiske and Selectman Brian Robischeau (in the audience).

Members and Alternates absent: None. Tardy: None.

III. Public Hearing

A. Preliminaries

1. Member Paul Tremblay recused himself as an abutter and sat in the audience.

2. Chairman Frank Frazier stated that resident Susan Zelek of 112 Clark Rd. (Map 18, Lot 14) has applied for a variance to the 250-foot frontage requirement in the town’s zoning ordinance (Article II, A. 3 (Building Lot Requirements) in order to subdivide her 7.8 acre lot, which has only 420 feet of frontage on Clark Road. He explained that usually a variance is requested when the planning board formally denied a request for a subdivision. In this case there was no formal denial; however, Brookfield zoning allows a request for a variance without a planning board hearing.

The chair noted that this is not a request for a Special Exception to zoning, which only applies to non-conforming lots of record that existed prior to the adoption of the zoning ordinance. The undivided Zelek lot conforms to all lot requirements.

3. The chair explained that the board will first hear from the applicant, then abutters and finally the audience before deliberating on the variance request.

4. In 2013 the legislature amended RSA 674:33, which governs variances, by changing the order of the five requirements that must be met to be granted a variance and also changed and expanded the fifth requirement. The board will use the five requirements as amended in its deliberations.

B. Presentations

1. Property owner and applicant Susan Zelek stated that she has been a Brookfield resident for 40 years and is asking for a variance in order to use her land in a more flexible manner. Her plan to subdivide her property meets all zoning requirements except frontage.

She cited the town’s Master Plan desire to protect the rural character of the town. She said there was a concern at the time about overdevelopment, which resulted in the 250-foot frontage requirement.

She said her proposed subdivision would not result in any added road maintenance cost. Rather than adding to costs it would add another structure to tax, while keeping the rural atmosphere.
She wants to subdivide her lot, originally part of the original Clark Farm, to give her daughter Jennifer a piece of land to build on. Her daughter grew up in Brookfield, currently lives in Effingham, and wants to live in town once more.

3. Chairman Frazier pointed out to Zelek that she needs to be specific about how the 420 feet of frontage would be divided, since it is short of 500 feet.

Zelek said she prefers to take 250 feet of frontage measured from abutter Tremblay’s property and provide 170 feet for her daughter’s lot. The other option is to give each of the new lots half of the frontage: 210 feet each.

The chair stated that no engineered plan of the subdivision was required for this hearing but would be for a planning board application. He noted that the two lots could have a shared driveway.

4. Two abutters were present but only Pam Wheeler spoke. She lives across from the Zelek lot at 119 Clark Road.

Wheeler said she was concerned about traffic on the road and adding to it. She also indicated she preferred a shared driveway and a 210-210 frontage split. As for the variance, she said. “There are rules for a reason. A lot of properties on the road are five acres or more.”

5. Audience member Rich Zacher of Kate’s Lane said the town voted for 250 feet of frontage, “so keep it.”

Rose Zacher pointed out that simply making a shared driveway is not a solution since you cannot have two dwellings on one lot.

Dianne Smith of Wentworth Road asked if Zelek could buy part of any adjoining lot to add 80 feet of frontage and make a 250-250 split possible. The chair answered “yes” and stated the only lot with surplus footage was on the left (to the west), though there are issues such as ledge, existing walls and 80-year-old trees. Clark Road is also a designated Scenic Road, which imposes some limitations.

Rose Zacher said another option is to put in a road to create sufficient frontage. The 7.8 acre lot might support a road accessing three lots.

Zelek’s daughter Jennifer said she prefers privacy and the deepest possible setback that would not cost too much to plow.

C. Deliberation

Everyone who wanted to having a chance to comment, the chair closed public input and announced that the board would deliberate on the variance request using the five requirements set by the state. A “No” vote indicates the board member determined the requirement was not met; a “yes” vote meant it did.

1. The variance would not be contrary to the public interest.

Member Susan Weiske said that while she has empathy for the applicant, “laws are the ‘public interest’” so she voted “no.”

Member Ernie Brown said he felt it would not necessarily be contrary to the public interest and voted to ‘yes.”

Member Richard Mauser said he agreed with Weiske and voted “no.”

Chairman Frazier agreed with Brown and voted “yes.”

With a tied 2-2 vote, the requirement is not met, Frazier stated.
2. **The spirit of the ordinance is observed.**
   Mauser stated that he is concerned about an 80-foot shortage in frontage, as opposed to 10 or 20 feet and voted “no.”
   Weiske said she was concerned that the closeness of houses goes against the spirit of the ordinance and voted “no.”
   Brown stated he felt the spirit of the ordinance was observed and voted “yes.”
   Frazier voted “no.”
   With a vote of 3-1 against, the requirement was not met.

3. **Substantial justice is done.**
   The chair explained that this requirement would be met if the loss to the applicant does not produce a gain to the general public.
   Frazier said he was “neutral” on this requirement and voted “yes.”
   Brown voted “no.”
   Weiske voted “no.”
   Mauser voted “no.”
   With a vote of 3-1 against, the requirement was not met.

4. **Values of surrounding properties are not diminished.**
   Brown said he felt values would not be affected and voted “yes.”
   Weiske said it was impossible to answer this question and voted “no.”
   Mauser felt having two houses would diminish values and voted “no.”
   Frazier voted “no.”
   With a vote of 3-1 against, the requirement was not met.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
   The chair explained that since this requirement is a source of most legal challenges, it was modified and clarified by the legislature in 2013, and now has two parts. In the words of RSA 674:33:
   “(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
   (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
   (ii) The proposed use is a reasonable one.
   (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.”
   Frazier said he felt that the use was “a reasonable one” but was concerned that the property does not have “special conditions” and if the board finds there is hardship it would set a precedent.
   Brown agreed that the hardship should be with the land.
   Frazier noted that the property was purchased in 1978 after zoning was in place.
   Mauser said this was very difficult to decide.
Weiske voted “no.”
Brown voted “yes.”
Mauser voted “no.”
Frazier voted “no.”
With a vote of 3-1 against, the requirement was not met.

D. Decision
By a vote of 3-1 the Board found that none of the variance criteria were met. The board specifically found that there was no hardship that arose from special conditions of the property which justified the grant of the variance. The board also expressed concerns about the increased density which would result from the variance, finding that that would not observe the spirit of the ordinance and would be contrary to the public interest. Moreover, no evidence was presented on the criteria of diminished property values.

The chair noted that applicant Zelek has appeal rights.
Zelek thanked the board for its difficult decision but stated, “What concerns me is that I can do an Accessory Dwelling Unit [ADU] but can’t get a variance.” Brookfield zoning allows a two-bedroom ADU that is attached to the main dwelling.

E. Adjournment
The board adjourned the public hearing at 7:55 p.m.

Respectfully submitted by
Thomas Beeler
Administrative Assistant